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## BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE APPLICATION OF THE  
ARIZONA ELECTRIC DIVISION OF CITIZENS  
COMMUNICATIONS COMPANY TO CHANGE  
THE CURRENT PURCHASED POWER AND FUEL  
ADJUSTMENT CLAUSE RATE, TO ESTABLISH A  
NEW PURCHASED POWER AND FUEL  
ADJUSTMENT CLAUSE BANK, AND TO  
REQUEST APPROVED GUIDELINES FOR THE  
RECOVERY OF COSTS INCURRED IN  
CONNECTION WITH ENERGY RISK  
MANAGEMENT INITIATIVES.

E-01032C-00-0751

## CITIZENS' RESPONSE TO RUCO'S MOTION FOR PROTECTIVE ORDER

Citizens Communications Company ("Citizens") submits this response to RUCO's Motion for Protective order. Citizens does not object to entry of the Protective Order, but for the reasons stated does not believe that entry of the Order will allow Citizens to release the requested information directly to RUCO.

Attached hereto as Exhibit A is a June 1, 1999 Confidentiality Agreement between Citizens and Arizona Public Service Company ("APS"). Section 2 of the Confidentiality Agreement broadly defines "confidential information." Its Section 1(e) requires that Citizens shall not provide confidential information to a third party, such as RUCO, "unless APS has first consented to the disclosure..."

On December 19, 2000, APS and RUCO entered into a Protective Agreement and counsel for APS transmitted a copy of that Agreement to Citizens' counsel on December 28. A

1 copy of the transmittal letter and Protective Agreement are attached as Exhibit B. The  
2 RUCO/APS Protective Agreement requires that Citizens only provide confidential information to  
3 RUCO by first providing it to APS (paragraph 3.d). In the December 28 transmittal letter, APS  
4 stressed that Citizens was only authorized to release information to RUCO in accordance with  
5 this procedure: "Any other release will be considered a violation of the protective agreement  
6 between Citizens and APS."

7 Citizens has, pursuant to this procedure, provided to RUCO--through APS--almost all  
8 confidential data which has been requested by RUCO. Citizens has declined, however, to supply  
9 RUCO a copy of the Audit Report prepared by Citizens' consultants because it does not wish to  
10 disclose this report to APS. Yet, because of the provisions of the RUCO/APS Agreement, this is  
11 the only way Citizens can supply the requested information to RUCO.

12 In conclusion, Citizens does not object to entry of the Protective Order requested by  
13 RUCO. However, it does not believe that entry of that Order will allow Citizens directly to  
14 provide the Audit Report to RUCO without an arguable violation of the June 1, 1999  
15 APS/Citizens' Confidentiality Agreement. To the extent the Administrative Law Judge may  
16 elect to treat RUCO's request as a motion to compel, Citizens is providing a copy of this  
17 response to APS' counsel pursuant to Citizens' notification obligations under paragraph 1(f) of  
18 the Confidentiality Agreement.

19 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of March, 2001.

20 GALLAGHER & KENNEDY, P.A.

21 By Michael M. Grant  
22 Michael M. Grant  
23 Todd C. Wiley  
24 2575 East Camelback Road  
Phoenix, Arizona 85016-9225  
Attorneys for Citizens Communications  
Company

1 **Original** and ten copies filed this  
2 9th day of March, 2001 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 **Copies** of the foregoing mailed  
8 this 9th of March, 2001, to:

9 Lyn Farmer, Esq.  
10 Chief Administrative Law Judge  
11 Hearing Division  
12 Arizona Corporation Commission  
13 1200 West Washington  
14 Phoenix, Arizona 85007

15 Christopher Kempley, Esq.  
16 Chief Counsel  
17 Legal Division  
18 Arizona Corporation Commission  
19 1200 West Washington  
20 Phoenix, Arizona 85007

21 Walter Meek, Esq.  
22 Arizona Utility Investors Association  
23 Suite 210  
24 2100 North Central Avenue  
Phoenix, Arizona 85004

Christine Nelson, Esq.  
Deputy County Attorney  
Post Office Box 7000  
Kingman, Arizona 86402-7000

Daniel W. Pozefsky, Esq.  
RUCO  
Suite 1200  
2828 North Central Avenue  
Phoenix, Arizona 85004

1 Thomas Mumaw, Esq.  
2 Snell & Wilmer  
3 One Arizona Center  
4 Phoenix, Arizona 85004  
5 Attorneys for APS

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By:

3099-0039/909699

Linda Maguire



THE POWER TO MAKE IT HAPPEN™

ARIZONA PUBLIC SERVICE COMPANY  
400 North Fifth Street  
P.O. Box 53999  
Phoenix, Arizona 85072-3999

June 1, 1999

Mr. Dan McCarthy  
Vice President  
Citizens Utilities Company  
1300 S. Yale St.  
Flagstaff, AZ 86001

Re: Confidentiality Agreement

Gentlemen:

This letter agreement (the "Agreement") will confirm our agreement concerning confidentiality in connection with certain Confidential Information, as hereinafter defined, to be disclosed by Arizona Public Service Company ("APS") to Citizens Utilities Company ("Citizens"). The Confidential Information is being disclosed to Citizens for the purpose of affording Citizens the opportunity to review i) APS's power plant operating data and O&M charges in connection with certain services provided by APS to Citizens, and ii) APS's billing methodology and supporting pricing information (the "Transactions").

**1. Citizens' Obligations Regarding Confidential Information.**

You agree:

(a) to strictly maintain and administer APS' Confidential Information as required in this Agreement, and not to use or disclose it for any purpose other than in connection with the Transaction.

(b) that APS' disclosure of the Confidential Information is not a waiver of APS' intellectual property rights in respect thereto, nor is it a transfer of APS's intellectual property rights therein, or a license or other authorization to Citizens to review the Confidential Information, except in the manner and for the purposes expressly authorized in writing by us.

(c) that you will not commingle Confidential Information with other records or information maintained or administered by you, and that you will maintain said information in secure locations that are not accessible to third parties who do not have a need to know their contents.

(d) not to use Confidential Information (including, but not limited to the knowledge obtained therefrom) in providing services to third parties or otherwise, unless first consented to by APS in writing, which may be granted or withheld in APS' sole discretion.

(e) not provide or disclose Confidential Information received from APS to any third parties, unless APS has first consented to the disclosure and the third party to whom disclosure is to be made first agrees in writing to be personally bound by the terms hereof and assumes liability for breach hereof to APS.

(f) that if you are ordered by a regulatory authority to disclose the Confidential Information, you will promptly advise us, so that we have the opportunity to participate in the disclosure of the Confidential Information in question, including, but not limited to the negotiation and execution of protective agreements or protective orders intended to provide for the continuing confidential treatment of the Confidential Information in question.

(g) to return to us all Confidential Information disclosed to you, including all copies, notes or extracts thereof upon termination of this Agreement, or upon our request. Even so, you will remain obligated to preserve the confidentiality of the knowledge gained by you from the Confidential Information.

## 2. "Confidential Information" Defined.

(a) For purposes of this Confidentiality Agreement, "Confidential Information" shall be broadly construed to include, but not be limited to, all forms of information disclosed by APS to you in connection with the Transaction. For illustration purposes only, it may include correspondence, contract proposals and contract drafts; written notes; internal notes and diary entries, memoranda, correspondence, facsimile transmissions, computer files and programs, e-mail messages and files, studies, analyses and evaluations, or any other type-written, printed or computer-based records, or copies thereof in whatever medium; as well as all information contained in or knowledge gained from any of such documents or records or communicated through oral communications between, on behalf of, or among the parties:

(b) "Confidential Information" does not include the following:

(1) matters of public knowledge; or

(2) information lawfully in the Citizens' possession at the time this Confidentiality Agreement is entered into; or

- (3) information independently developed from other sources available to Citizens which are not then subject to an obligation to APS to preserve the confidentiality of such information;

**3. APS' Remedies For Citizens' Breach.**

You agree that an exclusive remedy of money damages would not be a sufficient remedy for any breach of this Confidentiality Agreement, and that in addition to all other remedies to which it may be entitled, APS may be entitled to specific performance and/or injunctive or other relief as a remedy. Any equitable relief sought or secured hereunder shall not bar recovery for and other remedies available at law or in equity, including without limitation, money damages.

**5. Term of This Confidentiality Agreement.**

The provisions of this Confidentiality Agreement shall remain in effect for a period of three (3) years after the date hereof.

**6. Execution.**

Please acknowledge your agreement to the terms of this Confidentiality Agreement by signing in the space provided.

Sincerely,

ARIZONA PUBLIC SERVICE COMPANY

By: Dennis F. Beal

Title: Director SW Marketing 29.

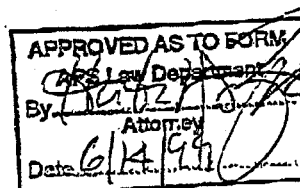
AGREED TO THIS 9 day of  
JUNE, 1999.

CITIZENS UTILITY COMPANY

By:

Title:

VP Ariz Energy



**Snell & Wilmer**  
L.L.P.  
LAW OFFICES

One Arizona Center  
Phoenix, Arizona 85004-2202  
(602) 382-6000  
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Thomas L. Mumaw (602) 382-6396  
Internet: tmumaw@swlaw.com

**R C E I V E D**

**JAN 02 2001**

**GALLAGHER & KENNEDY**

PHOENIX, ARIZONA

TUCSON, ARIZONA

IRVINE, CALIFORNIA

SALT LAKE CITY, UTAH

December 28, 2000

Michael M. Grant, Esq.  
GALLAGHER & KENNEDY, P.A.  
2575 East Camelback Road  
Phoenix, AZ 85016-9225

**Re: Citizens Communications Company Purchase Power Investigation  
Docket No. E-01032C-00-0751**

Dear Mike:

Enclosed please find a copy of an executed Protective Agreement between Arizona Public Service Company ("APS") and the Residential Utility Consumer Office ("RUCO") in the above matter. Such copy also includes a list of the RUCO personnel authorized to receive and review confidential APS information. Staff is expected to execute a similar agreement in the near future, and I will forward it when received.

As you can see, the Protective Agreement requires that all APS confidential information previously provided to Citizens by APS which is necessary to respond to a RUCO data request or other discovery must be provided to APS for distribution to RUCO. For that purpose, such information, along with a copy of the specific RUCO data request for which Citizens believes the information to be responsive, should be forwarded to:

Sharon Madden  
ARIZONA PUBLIC SERVICE COMPANY  
400 N. 5th Street  
Phoenix, AZ 85004

Citizens will thereafter receive confirmation that the information has been provided RUCO in satisfaction of the latter's data request. Should a dispute arise between APS and RUCO over whether the information so provided is confidential or is responsive to the specific RUCO data request at issue, Citizens will likewise be informed.

I must again emphasize that Citizens is authorized to release confidential APS information to or for RUCO's use only in conformance with the enclosed Protective Agreement



Michael Grant, Esq.  
December 28, 2000  
Page 2

and using the procedure outline above. Any other release will be considered a violation of the protective agreement between Citizens and APS. Please call me if you have any questions.

Very truly yours,

Snell & Wilmer

  
Thomas L. Mumaw

Attorneys for APS

**BEFORE THE ARIZONA CORPORATION COMMISSION**

Carl J. Kunasek  
Chairman  
Jim Irvin  
Commissioner  
William A. Mundell  
Commissioner

IN THE MATTER OF THE APPLICATION	)	Docket No. E-01032C-00-0751
OF THE ARIZONA ELECTRIC DIVISION	)	
OF CITIZENS COMMUNICATIONS	)	PROTECTIVE AGREEMENT
COMPANY TO CHANGE THE CURRENT	)	
PURCHASED POWER AND FUEL	)	
ADJUSTMENT CLAUSE RATE, TO	)	
ESTABLISH A NEW PURCHASED	)	
POWER AND FUEL ADJUSTMENT	)	
CLAUSE BANK, AND TO REQUEST	)	
APPROVED GUIDELINES FOR THE	)	
RECOVERY OF COSTS INCURRED IN	)	
CONNECTION WITH ENERGY RISK	)	
<u>MANAGEMENT INITIATIVES</u>	)	

Arizona Public Service Company ("APS" or "the Company"), and the Residential Utility Consumer Office ("RUCO") enter into the following agreement:

1. In the above-captioned Docket, RUCO has requested certain documents, data, information, studies and other materials from the Arizona Electric Division of Citizens Communications Company ("Citizens"), some of which Citizens has obtained from APS, and which APS alleges is of trade secret, proprietary or confidential nature.
2. APS will permit Citizens to provide to RUCO information that APS alleges is of a trade secret, proprietary or confidential nature only pursuant to a Protective Agreement.
3. In order to expedite the provision of information to RUCO, APS and RUCO are entering into this Agreement.

4. RUCO agrees to be bound by the terms of this Agreement as to all documents, data, information, studies and other materials provided pursuant to this Agreement.

5. (a) Use of Confidential Information. All persons who may be entitled to review, or who are afforded access to any documents, data information, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, that are claimed to be of a trade secret, proprietary or confidential nature (herein referred to as "Confidential Information") by reason of this Agreement shall neither use or disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the Confidential Information secure as trade secret, confidential or proprietary information and in accordance with the purposes and intent of this Agreement.

(b) Persons Entitled to Review. Access to information shall be limited to RUCO legal counsel, retained experts for RUCO and certain limited RUCO staff members listed on attached Exhibit "B" who have been designated by RUCO as being involved in this proceeding.

(c) Nondisclosure Agreement. Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement in the form attached hereto and incorporated herein as Exhibit "A." The nondisclosure agreement (Exhibit "A") shall require the person to whom disclosure is to be made to read a copy of this Protective Agreement and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full

name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be promptly delivered to counsel for the providing party.

(d) Information Shall Be Provided Through APS. Any Confidential Information that RUCO desires to obtain from Citizens pursuant to this Agreement shall first be provided to APS, who shall promptly provide the Confidential Information to RUCO. Under this Agreement, the providing party shall mean APS.

6. Return of Confidential Information. All Confidential Information, copies thereof, and notes made by signatories to this Agreement, which have not been received into evidence shall be returned to the providing party within thirty (30) days after the final disposition of this matter, including administrative or judicial review.

7. Objections to Admissibility. The furnishing of any document, information, data, study or other materials pursuant to this Protective Agreement shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before the Commission.

8. Challenge to Confidentiality. This Agreement establishes a procedure for the expeditious handling of information that a party claims is confidential; it shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

(a) A party seeking to challenge the confidentiality of any materials pursuant to this Agreement shall first contact counsel for the providing party and attempt to resolve any differences by informal stipulation;

(b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:

(1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and

(2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be nonconfidential by the challenging party.

(c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by an Administrative Law Judge after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleadings required by subparagraph 8 (b) above.

(d) The record of said in camera hearing shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE AGREEMENT IN DOCKET NO. E-01032C-00-0751." Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Administrative Law Judge and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Agreement.

(e) In the event that the Administrative Law Judge should rule that any information, document, data or study should be removed from the restrictions imposed by

this Agreement, RUCO shall not disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subparagraph are entered to enable the providing party to seek a stay or other relief from an order removing the restriction of this Agreement from materials claimed by the providing party to be confidential.

9. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding of Confidential Information in the following manner:

(1) At least five (5) days prior to the use of or substantive reference to any Confidential Information, the parties intending to use such information shall make that intention known to the providing party.

(2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature.

(3) If such efforts fail, the requesting party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.

(4) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the requesting party to the Commission, and maintained in accordance with the terms of this Agreement.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE AGREEMENT IN DOCKET NO. E-01032C-00-0751," and shall not be examined by any person except under the conditions set forth in this Agreement.

(c) In Camera Hearing. Any Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Agreement. Similarly, any cross-examination on or substantive references to Confidential Information (or that portion of the record containing Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Administrative Law Judge and persons who have signed an Exhibit "A," unless such information is released from the restrictions of this Agreement either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of an Administrative Law Judge, the order of the Commission and/or the final order of a court having final jurisdiction.

(e) Appeal. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal as designated herein for the information and use of the court. If a portion of the record is forwarded to a court under seal for the purpose of an appeal, the providing party shall be notified as to which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal.

(f) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this

Agreement, and shall be returned to counsel for the providing party within thirty (30) days after final disposition of this matter, including administrative or judicial review.

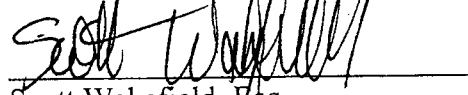
10. Use in Pleadings. Where references to Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in Paragraph 9), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information contained therein. Any use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Administrative Law Judge or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A." All of the restrictions afforded by this Agreement apply to materials prepared and distributed under this Paragraph.

11. Summary of Record. If deemed necessary by the Administrative Law Judge, the providing party shall prepare a written summary of the Confidential Information referred to in the Agreement to be placed on the public record.

12. The provisions of this Agreement are specifically intended to apply to all data, documents, information, studies, and other material supplied by APS, whether the material originated at APS or was provided to RUCO by some other entity with an agreement to hold the material in a confidential manner.


Dated this 19<sup>th</sup> day of December, 2000.

RESIDENTIAL UTILITY CONSUMER OFFICE

  
\_\_\_\_\_  
Scott Wakefield, Esq.  
Daniel W. Pozefski, Esq.  
Counsel for RUCO



ARIZONA PUBLIC SERVICE COMPANY

  
\_\_\_\_\_  
Alan Propper  
Director, Pricing and Regulation